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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CARLOS CHACON et al.,

Plaintiffs and Appellants,

v.

CITY OF SAN DIEGO et al.,

Defendants and Respondents.

D042937

(Super. Ct. No. GI807260)

APPEAL from a judgment of the Superior Court of San Diego County, Linda B. Quinn, Judge. Affirmed.

Plaintiff Carlos Chacon is a sergeant in respondent City of San Diego's (the city) police department. Chacon was transferred from the police department's gang unit to an investigation unit as the result of disciplinary action. However, on administrative appeal the disciplinary aspects of the transfer were overturned. Chacon and plaintiff and appellant San Diego Police Officers Association (the association) argue he should therefore be returned to the gang unit. We disagree.

Because the record shows there were valid non-punitive administrative reasons to maintain the transfer, the city was not required to reinstate Chacon to his former position. Accordingly, we affirm the judgment denying his petition for a writ of mandate.

## FACTUAL AND PROCEDURAL BACKGROUND

### *A. Chacon's Employment Background*

The police department's gang unit is comprised of detectives with prior investigative experience and a detective sergeant. In the summer of 2000 Chacon was the detective sergeant for his gang unit team. Communication and trust among unit members are paramount because members work closely with each other to carry out complex, high-risk assignments.

### *B. The "Collision" and Investigation*

In August 2000, while driving a police department vehicle, Chacon hit another car and left the scene without notifying the other car's owner. The collision was witnessed by one of Chacon's subordinate employees, and it appeared the collision damaged the other car.

In December 2000 the department completed its investigation of the collision and found Chacon had committed criminal conduct. However, Chacon was not issued a reprimand until May 2001, nine months after the collision. Upon issuance of the reprimand, Chacon was transferred from the gang unit to the Eastern Division investigation unit. The notice of transfer stated Chacon was being transferred "for the reasons outlined in the attached Reprimand."

The delay in investigating the collision and disciplining Chacon caused gang unit members to believe the department was giving Chacon preferential treatment. During the nine months between the collision and Chacon's transfer, morale declined in the gang unit. When the initial investigation found Chacon guilty of criminal conduct, he lost credibility with his team, and both his supervisors and team members lost confidence in his ability to lead his team effectively.

*C. Administrative Appeal and Reversal of Wrongdoing*

Chacon timely appealed the discipline. In December 2001 Assistant Chief of Police William Maheu conducted a hearing in accordance with Government Code section 3304, subdivision (b). After considering oral testimony and evidence from the investigation, Chief Maheu found that although Chacon had struck the other car, there was insufficient evidence the other car had in fact been damaged by the collision. Therefore, Mahue concluded Chacon had not committed any offense by leaving the scene of the collision. Chief Maheu overturned the notice of reprimand but left the transfer in effect, removing any indication it was disciplinary in nature.

*D. Reason for Leaving the Transfer in Effect*

According to former Police Chief David Bejarano, even though Chacon was absolved of wrongdoing, the department left his transfer in effect because the relationship between Chacon and his team members had been irreparably damaged over the course of the investigation and appeal. According to the chief, during the investigation "morale in the gang unit and Sergeant Chacon's team had plummeted and discontent had increased. The sustained finding of criminal conduct resulted in Sergeant Chacon's loss of

credibility as a supervisor and a loss of confidence in Sergeant Chacon's ability to lead his team effectively, from the perspective of team members and his chain of command. Even though the criminal conduct finding eventually was overturned and the reprimand rescinded, the supervisor-subordinate relationship within Sergeant Chacon's team was irreparably damaged. Credibility and trust were lost.

". . . . Accordingly, I supported Assistant Chief Bill Maheu's decision to keep Sergeant Chacon's transfer in place. Under the circumstances, his transfer was in the best interests of Sergeant Chacon and his team members, giving both supervisor and subordinates a fresh start."

Chief Bejarano offered to return Chacon to the gang unit when there was a vacancy. Chacon insisted that a new position be created for him so he could immediately return to the unit. Chief Bejarano refused and suggested Chacon apply for other detective sergeant positions for which he was qualified.

#### *E. Petition for Writ of Mandate*

In March 2003 Chacon filed a petition for a writ of mandate under Code of Civil Procedure section 1085. He alleged that because his transfer was disciplinary, and the discipline had been overturned, he should have been returned to the gang unit. Chacon further requested declaratory relief to determine the rights and responsibilities of the parties. The court denied the petition, stating the transfer was "within the managerial rights of the police department." Chacon filed a timely notice of appeal.

## DISCUSSION

### I

#### *Standard of Review*

A traditional writ of mandate under Code of Civil Procedure section 1085 lies to compel performance of a legal duty imposed on a government official. (*Silver v. Los Angeles County Metropolitan Transportation Authority* (2000) 79 Cal.App.4th 338, 347.) Such a writ is available where "the petitioner has no plain, speedy and adequate alternative remedy; the respondent has a clear, present and usually ministerial duty to perform; and the petitioner has a clear, present and beneficial right to performance." (*Conlan v. Bonta* (2002) 102 Cal.App.4th 745, 752.)

"In reviewing the trial court's ruling on a writ of mandate [citation], the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. [Citation] However, the appellate court may make its own determination when the case involves resolution of questions of law where the facts are undisputed. [Citation]." (*Saathoff v. City of San Diego* (1995) 35 Cal.App.4th 697, 700.)

### II

#### *Nature of the Transfer*

As a sergeant for the city, Chacon falls within the protections of the Public Safety Officers Procedural Bill of Rights Act (Gov. Code, § 3300 et seq.) (Bill of Rights.) Government Code section 3304, subdivision (b), provides: "No punitive action . . . shall be undertaken by any public agency against any public safety officer who has

successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal." Government Code section 3303 states: "For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment."

Chacon does not contend he was denied a hearing or that the procedure at his hearing was improper. Rather, he argues that because his transfer was the direct result of a disciplinary finding which was later vacated, the department was not only required to delete the reprimand from his personnel file but was also required to return him to his supervisory position in the gang unit. On this record we find no basis for requiring such a reinstatement.

#### A. Bill of Rights Does Not Cover Non-Punitive Administrative Decisions

"[T]he Legislature intended, in the Bill of Rights Act, to provide the right of administrative appeal to a peace officer against whom disciplinary action is taken, and that the Legislature viewed 'dismissals,' 'demotions,' 'suspensions,' 'reductions in salary' and 'written reprimands' to be per se disciplinary in nature. A transfer, however, is 'disciplinary' in nature only if imposed 'for purposes of punishment.'" (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 682-683.) Moreover, "not every action taken by a law enforcement agency in reviewing, evaluating or commenting upon the performance of one of its peace officers constitutes punitive action. For example, a routine performance evaluation would not constitute punitive action, even though it contained negative

comments. [Citation.] ' "Certainly, the Legislature did not contemplate an administrative appeal every time an employee receives an adverse evaluation. Indeed, the Legislature has obviously drawn a distinction between 'punitive action' and adverse comments entered in a personnel file. As to the former, an administrative appeal is mandated [citation], but as to the latter, the officer merely has the right to notice and to respond [citation].' [Citation.]" (*Otto v. Los Angeles Unified School Dist.* (2001) 89 Cal.App.4th 985, 996.)

As we noted in *Caloca v. County of San Diego* (1999) 72 Cal.App.4th 1209, 1220, for purposes of the Bill of Rights, "punitive action is 'any action that *may lead to* dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.' [Citation.]" There we found that because derogatory findings made by a civilian review board might later lead to adverse consequences for peace officers, they had the right to a hearing challenging the findings. (*Id.* at p.1222; see also *Hopson v. City of Los Angeles* (1983) 139 Cal.App.3d 347, 352-354.)

#### B. The Decision to Maintain the Transfer Was Not Punitive

Because the city determined that Chacon had not damaged the vehicle and expressly overturned his reprimand, the trial court found the city's unwillingness to also reinstate Chacon to his former position was a non-punitive exercise of the city's managerial rights. This trial court finding is supported by the fact that Chacon did not suffer any loss of pay or other benefits. This finding is also supported by the declaration of Chief Bejarano in which he explained that although Chacon was not guilty of any misconduct, he was no longer an effective leader of the gang unit. The then-chief of

police stated there was friction between appellant and his team members, morale was low and credibility and trust were lost.

On this record the absence of reinstatement cannot be characterized as any more punitive than a negative employment evaluation. Contrary to Chacon's contention, the record shows the transfer that remained in effect was not in relation to alleged criminal conduct, but rather was the result of Chacon's ineffectiveness as a supervisor in the gang unit. As we have seen, such entirely administrative judgments and personnel assignments are outside the scope of the Bill of Rights. (See *Otto v. Los Angeles Unified School Dist.*, *supra*, 89 Cal.App.4th at p. 996.)

Chacon relies on *Heyenga v. City of San Diego* (1979) 94 Cal.App.3d 756, 759 (*Heyenga*), to argue that we are to look through form to the substance of the transfer and ignore the label respondents place on it. In *Heyenga* the court considered the trial court's denial of a preliminary injunction that would enjoin a police department from transferring two officers prior to an administrative hearing on their alleged criminal conduct. On appeal the Court of Appeal reversed the trial court's denial of the preliminary injunction, finding the injunction would not harm the police department and the appellants would receive a hollow victory if the allegations against them were overturned after they were already transferred. (*Id.* at p. 760.)

*Heyenga* is readily distinguished. In holding that the appellants were entitled to *preliminary* relief, the court in *Heyenga* did not address the question presented here: the scope of relief available upon a successful administrative appeal. Nothing in *Heyenga* in any manner limits an agency's ability to exercise non-punitive managerial discretion.



## DISPOSITION

The trial court's findings were fully supported by the record. The judgment is affirmed.

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BENKE, Acting P. J.

WE CONCUR:

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AARON, J.

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IRION, J.